

services to the public free from undue regulatory duplication and burden), OTS occupies the field of the regulation of the fiduciary activities of Federal savings associations. In so doing, OTS intends to give Federal savings associations maximum flexibility to exercise their fiduciary powers in accordance with a uniform scheme of Federal regulation. Accordingly, Federal savings associations may exercise fiduciary powers as authorized under Federal law, including this part, without regard to State laws that purport to regulate or otherwise affect their fiduciary activities, except to the extent provided in 12 U.S.C. 1464(n) (State laws regarding scope of fiduciary powers, access to examination reports regarding trust activities, deposits of securities, oaths and affidavits, and capital) or in paragraph (c) of this section. For purposes of this section, "State law" includes any State statute, regulation, ruling, order, or judicial decision.

(b) *Illustrative examples.* Examples of State laws that are preempted by the HOLA and this section include those regarding:

- (1) Registration and licensing;
- (2) Recordkeeping;
- (3) Advertising and marketing;
- (4) The ability of a federal savings association conducting fiduciary activities to maintain an action or proceeding in State court; and
- (5) Fiduciary-related fees.

(c) *State laws that are not preempted.* State laws of the following types are not preempted to the extent that they only incidentally affect the fiduciary operations of Federal savings associations or are otherwise consistent with the purposes of paragraph (a) of this section:

- (1) Contract and commercial law;
- (2) Real property law;
- (3) Tort law;
- (4) Criminal law;
- (5) Probate law; and
- (6) Any other law that OTS, upon review, finds:
 - (i) Furthers a vital State interest; and
 - (ii) Either has only an incidental effect on fiduciary operations or is not

otherwise contrary to the purposes expressed in paragraph (a) of this section.

[67 FR 76299, Dec. 12, 2002, as amended at 68 FR 53026, Sept. 9, 2003]

§ 550.140 Must I adopt and follow written policies and procedures in exercising fiduciary powers?

You must adopt and follow written policies and procedures adequate to maintain your fiduciary activities in compliance with applicable law. Among other relevant matters, the policies and procedures should address, where appropriate, the following areas:

- (a) Your brokerage placement practices.
- (b) Your methods for ensuring that your fiduciary officers and employees do not use material inside information in connection with any decision or recommendation to purchase or sell any security.
- (c) Your methods for preventing self-dealing and conflicts of interest.
- (d) Your selection and retention of legal counsel who is ready and available to advise you and your fiduciary officers and employees on fiduciary matters.
- (e) Your investment of funds held as fiduciary, including short-term investments and the treatment of fiduciary funds awaiting investment or distribution.

FIDUCIARY PERSONNEL AND FACILITIES

§ 550.150 Who is responsible for the exercise of fiduciary powers?

The exercise of your fiduciary powers must be managed by or under the direction of your board of directors. In discharging its responsibilities, the board may assign any function related to the exercise of fiduciary powers to any director, officer, employee, or committee of directors, officers, or employees.

§ 550.160 What personnel and facilities may I use to perform fiduciary services?

You may use your qualified personnel and facilities or an affiliate's qualified personnel and facilities to perform services related to the exercise of fiduciary powers.